

Exhibit A

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

KAITLYN REICHWALDT

Plaintiff,

vs.

GENERAL MOTORS LLC,

Defendant.

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CIVIL ACTION FILE NO.

1:16-CV-02171-twt

JURY TRIAL DEMANDED

FIRST AMENDED COMPLAINT

James E. Butler, Jr.
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Plaintiff Kaitlyn Reichwaldt files this Complaint for Personal Injury and Punitive Damages against Defendant General Motors LLC (“GM LLC”), showing this Honorable Court the following:

I. INTRODUCTION

1.

This is yet another case for another victim of GM Corp.’s¹ “CK” pickup trucks with gas tanks located *on the side* of the truck outside the frame rails with no protection from side impact. The gas tanks were located in a known “crush zone”—in an area GM Corp. knew was vulnerable to side impact. GM Corp. sold those CK pickups for 15 years, from 1973 until 1987. Hundreds of Americans have burned, most to death, as a result of that design. The design is *indefensible*. As GM Corp. engineer Edward Ivey testified *twenty two years ago*:

¹ References to “GM Corp.” contained herein that discuss conduct occurring before July 10, 2009, ~~are referring~~ are referring to the conduct of General Motors Corporation. References to “GM LLC” contained herein that discuss conduct occurring after July 10, 2009 are referring to the conduct of General Motors LLC. As discussed more fully below, GM LLC expressly agreed to be subject to suit for product liability claims for wrecks occurring after July 10, 2009 in vehicles built by GM Corp. before that date.

1 Q: Can you name a worse place to put a fuel tank than outside the frame
2 rail on the side?

3 A: Well, yes, you could put it on the front bumper.²

4 2.

5 Despite actual knowledge of the defect and of the danger, despite countless
6 cases settled by both GM Corp. and GM LLC, despite GM Corp.'s own
7 long-concealed crash tests that proved the tanks were vulnerable to rupture and
8 explosion, GM ~~LLC, which inherited the specific knowledge of its predecessor~~
9 ~~GM Corp. and which has its own knowledge of the defect and of the danger,~~
10 ~~continues to deny the obvious—that the design is indefensible—and continues to~~
11 ~~refuse~~ Corp. refused to warn Americans of the danger.
12
13
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15 3.

16 The CK litigation has been fought in courtrooms all across America for
17 decades now, involved the concealment of evidence and the alleged destruction of
18 documents,³ and embroiled law firms from around the country, including from
19 Atlanta.
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25 ²—1/9/94 Deposition of Edward Ivey, Bishop v. GM & Cameron v. GM, at
26 98/11-16.

27 ³ In a 1992 deposition, engineer Theodore Kashmerick testified that documents
28 retrieved from him were “shredded.” *Elwell v. GM*, 91-115946-NZ, Circuit
Court of Wayne County, Michigan, 12/29/92 at pp. 13/3-7, 24/5-20.

1 4.

2 This particular case involves severe burn injuries suffered on January 27,
3 2015 by then-19-year-old Kaitlyn Reichwaldt as a result of a 1984 CK pickup
4 truck sliding into her 2003 Taurus. The CK pickup had a gas tank mounted *on the*
5 *side* of the vehicle outside the frame rails, unprotected by anything but body side
6 sheet metal, and affixed to the rigid steel frame rail.
7

8 5.

9 Kaitlyn Reichwaldt was driving on Salt Creek Roadway, a divided four-lane
10 road near the University of Nebraska in the city of Lincoln, Nebraska, with a
11 raised median separating the lanes going eastbound and the lanes going
12 westbound. A 1984 Old GM CK pickup truck with a side-mounted gas tank spun
13 out of control and crossed the median. The side of the Old GM CK pickup struck
14 the front of Ms. Reichwaldt's vehicle—right at the side-mounted gas tank. The
15 gas tank was crushed against the steel frame rail, gas sprayed over Ms.
16 Reichwaldt's vehicle including into the passenger compartment, the gas exploded,
17 and she was severely burned. But for the heroic actions of a bystander who pulled
18 her from her burning car, Kaitlyn Reichwaldt surely would have burned to death.
19 Kaitlyn Reichwaldt did nothing wrong; she was entirely innocent. But for the
20 burns, Ms. Reichwaldt would have been uninjured in the wreck.
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6.

The first CK pickup sold by GM Corp. was the model year 1973 pickup. GM Corp. knew before that first CK pickup was sold that it posed a singular and unique danger to occupants and to others on the road, because the gas tanks were located on the side of the truck outside the frame rail, *in the crush zone*, and affixed to rigid steel frame rails—against which the gas tanks could be crushed if the side of the truck was hit by or hit another car or any other object. That gas tank design is indisputably vulnerable to side impact.

7.

The risk of post collision fuel fed fire (“PCFFF”) is, of course, horrific—as the history of Old GM CK pickup trucks proves. Far too often people who should not have been seriously injured at all in wrecks have been burned, or have burned to death, because GM Corp. chose to put its gas tanks on the side of the CK pickups.

8.

That gas tanks located in a known crush zone make occupants and others vulnerable to horrific injuries or death has long been well known in the automotive

1 industry.⁴

2
3 9.

4 GM Corp. ~~(and now GM LLC)~~ **has had** itself long known that gas tanks
5 must not be located where they are unprotected from impact—and especially
6
7 should not be located *outside* the frame rail:

8 (a) In 1930, GM Corp. published an ad for a Chevrolet stating the gas “tank
9 is thoroughly protected by the wide rear cross member and heavy frame
10 side members.”
11

12 (b) In 1932, the Society of Automotive Engineers (“SAE”) published a paper
13 stating that the gas tank “should be protected by the body and the frame.”
14

15 (c) In 1964, a GM Corp. Executive Engineer wrote a “Design Directive”
16 stating “the fuel tank must be mounted as near to the center of the
17 vehicle (truck) as practical.”
18
19

20 ⁴ See, e.g., June 3, 2013 NHTSA “recall request letter,” sent to Chrysler: “The
21 vulnerability of tanks located behind solid rear axles in rear impacts became
22 well known following a series of fiery crashes involving the Ford Pinto. . . . It
23 was a well-publicized, terrible tragedy that people burned to death in these
24 vehicles.” GM Corp.’s side-mounted gas tanks were even *more*
25 vulnerable—they were closer to a striking vehicle than most rear-mounted gas
26 tanks, and even less protected. “In June 1978, Ford agreed to recall the Pinto
27 and Bobcat. The defect was that the fuel tanks installed on these vehicles are
28 subject to failure when the vehicles are struck from the rear.” *Id.* GM Corp. ~~and~~
~~GM LLC~~, by contrast, **have had** never recalled the CK pickups, never admitted
the danger, and never warned anyone of the danger.

- 1 (d) In 1974 the SAE published another paper stating that truck gas tanks
2 should be located *inside* “rugged *frame* channels.”
3
- 4 (e) In 1978, a “jury” of GM Corp. engineers studying “alternative fuel tank
5 locations” for trucks recommended the inside the frame rails location.
6
- 7 (f) In 1981, GM Corp. conducted its own secret and long-concealed
8 vehicle-to-vehicle side-impact collision tests on CK pickups. The results
9 gave GM Corp. ~~, and later GM LLC,~~ actual notice and knowledge that
10 gas tanks mounted on the side outside the frame rails were vulnerable to
11 rupture in side impact.
12
- 13 (g) In 1981, GM Corp. advertised about its new S-10 pickups, “fuel tank is
14 located *inside* the left hand *frame rail* for protection from side impacts.”
15
- 16 (h) In 1982, a GM Corp. engineer estimated the cost to “relocate” the CK
17 side-mounted gas tanks to an inside the frame rails location would be
18 only \$1.33 per tank.
19
- 20 (i) By 1983, GM Corp. was already designing the new 1988 pickup with the
21 gas tank located inside the frame rail for “added protection” in side
22 impacts, and a GM Corp. engineer’s presentation about the new pickup
23 stated the inside the frame rail location is “much less vulnerable.”
24
- 25 (j) In 1985, a GM Corp. engineer made a presentation to the President of
26
27
28

1 GM Corp., stating that the CK pickup “is subject to intense pressure as a
2 result of litigation due to PCFFF,” and noted that the planned new design
3 with an inside the frame rail gas tank will “reduce this concern.”

4
5 (k) When finally, in 1988, GM Corp. moved the gas tank to the inside the
6 frame rail location, GM Corp. issued a “confidential” directive to its
7 sales staff stating “fuel tank is located *inside the frame rail* to reduce the
8 chance of fuel spillage on side impact.”
9
10

11 10.

12 In May 1972, one of GM Corp.’s testifying engineers prepared a memo –
13 before the CK trucks were first sold as model year 1973 vehicles – attesting to the
14 fact that a gas leak “should not occur” unless the impact itself was great enough to
15 cause fatalities.
16
17

18 11.

19 GM Corp. put the gas tank on the side of its CK pickups solely for
20 marketing reasons – so GM Corp. could advertise that the pickup had a larger gas
21 tank and greater range.
22
23

24 12.

25 It was feasible and practical for GM Corp. to design and build the subject
26 pickups with gas tanks located inside the frame rail.
27
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13.

GM Corp.'s awareness of the horrific risk is reflected by its preparation in 1973 – the first model year GM Corp. sold its CK pickups, of a “cost-benefit analysis” which concluded that it was cheaper for GM Corp. to settle PCFFF cases than to eliminate all PCFFFs in GM Corp. vehicles. That “cost benefit analysis” came to be known as the “Ivey memorandum,” named after the engineer who prepared it for GM Corp. at the direction of his superiors.⁵

14.

For years GM Corp. actively concealed the “Ivey memorandum” from plaintiffs, courts, and juries. When it was finally discovered, Ivey was deposed. His sworn testimony was totally contrary to what he had told GM Corp.'s lawyers about the memorandum prior to that deposition. That ultimately resulted in a Court Order finding that “GM [Corp.] in fact acted [to] commit crimes and frauds” and that GM Corp. had, by concealing the Ivey memorandum, violated Court Orders in other cases.⁶

15.

⁵ Ivey calculated that if GM Corp. paid an average of \$200,000.00 per claim for those claims alleging death by fire, the cost to GM Corp. would be \$2.40 per vehicle sold. Ivey calculated it would be worth \$2.20 per vehicle for GM Corp. to prevent all deaths by fire in GM Corp. vehicles.

⁶ *Bampoe-Parry v. GM Corp.*, State Court of Fulton County, Ga., Civil Action File Nos. 98V50138297J & 98V50138298J, Sept. 9, 1999.

1 In 1973 – the year they were first sold – GM Corp. claimed its first CK
2 truck fire victim: Ernest Leon Smith of Columbus, Muscogee County, Georgia.
3

4 16.

5 Initially, GM Corp. defended some CK lawsuits, trying a few cases, but
6 settling far more. In 1993, GM Corp. was forced to try the case of *Moseley v. GM*.
7 in Atlanta, Georgia. That trial resulted in a widely publicized \$105 million
8 verdict, including punitive damages.⁷ The *Moseley* case arose after seventeen year
9 old Shannon Moseley of Snellville, Georgia was burned to death when his Old
10 GM CK pickup was hit in the side. His parents refused to settle. After the \$105
11 million verdict in the trial of *Moseley v. GM*, GM Corp. tried only two CK cases:
12 both were cases where the impact forces were so great the alternative gas tank
13 location was also severely compromised. Those were cases GM Corp. should not
14 have been able to lose.
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20 17.

21 For many years in the 1970s and 1980s, GM Corp.'s principal testifying
22 in-house engineer for fire cases was Ronald Elwell. He defended the CK truck in
23 depositions. He testified under oath that GM Corp. had conducted no
24 vehicle-to-vehicle crash testing of the CK trucks. Then, in 1983, Elwell was told
25 ⁷ *Moseley v. GM Corp.* was reversed on appeal and then settled by GM Corp. just
26 before retrial, along with three other CK cases.
27
28

1 by GM Corp. Executive Vice President Alexander McKeen that he ought to go out
2 to the GM Corp. proving grounds – that he might find something there interesting.
3
4 Elwell did so, and found “over 20” Old GM CK trucks that had been subjected to
5 vehicle-to-vehicle crash testing. Elwell subsequently testified, in the *Moseley*
6
7 trial, about the gas tanks on those pickups: “they were badly smashed. There were
8 holes in them as big as melons. They were split open.” McKeen told Elwell those
9
10 crash tests were done starting in 1981 after GM Corp. Assistant General Counsel
11 Babcock told McKeen “they could no longer defend the product.” The existence
12
13 of those crash tests had never been revealed by GM Corp. to any court, jury, or
14 plaintiff.⁸

15
16 18.

17 After seeing those crashed Old GM CKs, Elwell complained to his superior
18 that he might have unintentionally committed perjury. GM Corp. never again had
19
20 him testify in a CK fire case.⁹

21
22 19.

23 By 1982 fire cases were causing GM Corp. so much trouble that then-CEO
24 Roger Smith ordered a roundup of all internal documents that might be subject to
25

26 ⁸ *Moseley v. GM Corp.*, 1-14-93 Trial Transcript Vol. 13 (Elwell) at 126/9-127/1,
27 127/16-134/20.

28 ⁹ *Moseley v. GM Corp.*, 1-14-93 Trial Transcript Vol. 13 (Elwell) at 135/12-22.

1 requests for documents in fire cases. Initially the search was for documents
2 relating to passenger cars; by 1983 the search was expanded to include trucks.
3
4 GM Corp. called upon its various “regional counsel” law firms to send young
5 lawyers to Detroit to review all the collected documents. Internally, GM Corp.
6
7 staff referred to the young lawyers as the “firebabies.”¹⁰

8
9
10 20.

11 GM Corp. ~~and GM LLC have~~had been sued in hundreds of cases as a result
12 of people being burned in PCFFFs involving Old GM CK pickups with outside
13 the frame rail gas tanks. GM LLC has been sued in hundreds of cases as a
14 result of people being burned in PCFFFs involving Old GM CK pickups with
15 outside the frame rail gas tanks.
16

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18
19 21.

20 What happened on January 27, 2015, was not merely foreseeable to GM
21 Corp. ~~and GM LLC~~; *it was foreseen*— it had happened over and over again, to GM
22 Corp.’s ~~and GM LLC’s~~ actual knowledge. Plaintiffs’ counsel are aware of some
23
24 957 other incidents involving PCFFF in Old GM CK pickups with outside the
25

26
27 ¹⁰ Dep. of GM Corp. lawyer Brian Eyres, 93 1083 CBM, US District Court,
28 Central Dist. of CA, 9/29/93 at pp. 202/21-203/6.

1 frame rail gas tanks.¹¹

2 22.

3
4 GM Corp. quit making the CK pickups after model year 1987, and for
5 model year 1988, GM Corp. finally moved the gas tank to the alternative location
6
7 advocated by safety experts for decades – to an inside the frame rail location,
8 where the gas tank is protected from side impacts.

9 23.

10
11 In addition to Kaitlyn Reichwaldt, many other victims who were not even
12 occupants of [Old GM](#) CK pickups have been burned when a crash ruptured the
13 side-mounted gas tank of a CK. Examples include but are not limited to:

14
15 (a) On December 5, 1973, Ernest Leon Smith of Columbus, Georgia was
16
17 driving a Nash Rambler station wagon when a 1973 [Old GM](#) CK truck
18
19 turned left in front of his car, causing Mr. Smith's car to strike the right
20
21 side of the truck, rupturing the gas tank and causing a fire. The whole
22
23 left side of Mr. Smith's face and torso were burned; he suffered a stroke
while in the hospital after seeing himself in the mirror and never fully

24 ¹¹ See Exhibit A hereto: Plaintiffs' list of 782 other such incidents, *Byrd v. GM*,
25 [Corp.](#), M.D. Mt, 1998, CV-98-168-M-DWM. In 2015 GM LLC acknowledged
26 another 175 such incidents since the *Byrd* case was settled. See Exhibit B hereto
27 , *Williams v. GM*, N.D. Ga. Case No. 1:14-CV-02908. In *Williams v. GM*, GM
28 admitted that it had notice that there was a fire following [an Old GM](#) CK
wreck in 718 of the incidents identified in Exhibit A. See Exhibit C hereto.

recovered prior to his death in 1997.

(b) On October 29, 1992, thirty year old Calvin Cockrum of Altoona, Kansas was burned to death when his motorcycle slid and hit the side-mounted gas tank on ~~a~~an Old GM CK, dousing him with gas which exploded.

(c) On October 8, 1995, Jerome Dalton of Greene County, Georgia was burned to death when his motorcycle slid and hit the side-mounted gas tank on ~~a~~an Old GM CK, dousing him with gas which exploded.

(d) On August 31, 1996, Denise Barnes of Columbia, South Carolina was burned to death when her 1994 Saturn struck the side of ~~a~~an Old GM CK.

(e) On May 26, 2000, Corinne Gallagher of Flathead, Montana and all three of her sons, Thomas (8), Anthony (10), and Patrick (12), burned to death when the Hyundai she was driving was struck by ~~a~~an Old GM CK resulting in gas tank rupture and PCFFF.

24.

Many families have suffered multiple losses as a result of PCFFF after ~~a~~an Old GM CK's outside the frame rail gas tank was ruptured. In addition to Corinne Gallagher and all three of her sons, examples include:

1 (a) On May 20, 1990, a car ran a stop sign in Elfrida, Arizona and hit
2 Daniel Hannah's Old GM CK in the side. Mr. Hannah was severely
3 burned trying to save his two sons, Nathan 16 and Gabriel 17, who were
4 trapped inside the pickup. Mr. Hannah testified that the flames were "as
5 high as trees." He was unable to get his sons out of the vehicle, and saw
6 them burn to death.
7

8
9 (b) On July 15, 1995, Steven Seebeck of Bryan County, Georgia along with
10 his young son Michael Seebeck were traveling in a 1979 Old GM CK
11 pickup in Fort Stewart, Georgia when a car crossed the center line and
12 collided with the pickup rupturing the gas tank and causing a PCFFF.
13 Both father and son burned to death.
14

15
16 (c) On December 22, 1997, Darrell Byrd and Angela Byrd along with their
17 two sons, Timothy and Samuel, were traveling from Fortine, Montana to
18 North Carolina to visit family for Christmas. Near Russell, Kansas, the
19 1985 Old GM CK truck they were traveling in collided with a tractor
20 trailer. Darrell, Angela, and Timothy all burned to death. Samuel was
21 burned, but survived.
22
23
24

25 25.
26

27 That the problem with the Old GM CK trucks and PCFFF was in fact the
28

1 gas tank location *was admitted* by the very first witness *GM Corp. itself called* to
2 testify at the *Moseley* trial, a professional engineer and Georgia Tech graduate
3 who was then County Engineer for Gwinnett County, George Black.¹² Black
4 investigated the Moseley wreck, which GM Corp. claimed was a “high speed”
5 wreck. Black testified to a wreck involving ~~an~~ Old GM CK truck in a parking
6 lot where the gas tank ruptured, and admitted that it was “reasonable to say that
7 when you get failures at high speed and failures at low speed that tends to indicate
8 the problem isn’t the speed, the problem is the location of the fuel tank.”¹³ Mr.
9 Black also confessed that he had told the plaintiffs’ accident reconstruction
10 engineer that “you don’t have to be a rocket scientist to understand that the fuel
11 tank should not be outside the frame.”¹⁴

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17 26.

18 Because GM Corp. ~~and GM LLC~~ never warned anyone of the danger, there
19 are still hundreds of thousands of Old GM CK pickups on the roads of America
20 capable of causing the mayhem visited upon Kaitlyn Reichwaldt on January 27,
21 2015. GM Corp. ~~and GM LLC~~’s reckless and wanton failure to warn Americans
22 of the danger ~~has been~~ was continuous since the CK pickup that struck Ms.
23

24
25 ¹² Black subsequently was appointed by the President as a member of the National
26 Transportation Safety Board, where he served two terms.

27 ¹³ *Moseley v. GM*, 1-22-93 Trial Transcript (Black) Vol. 20 at 112/7-23.

28 ¹⁴ *Moseley v. GM*, 1-22-93 Trial Transcript (Black) Vol. 20 at 107/14-18.

1 Reichwaldt's car was manufactured in 1984. ~~That failure to warn continues to this~~
2 ~~day.~~

3
4 27.

5 The terrible defect of the gas tank location on Old GM CK pickups
6 continues to put American citizens at risk of horrible injuries and death, and
7 continues to cause injuries and deaths due to fire.

8
9
10 28.

11 On June 1 2009, GM Corp. sought bankruptcy protection. Following an
12 asset sale under section 363 of the Bankruptcy Code, GM LLC, the company that
13 ~~emerged from the bankruptcy with~~ purchased most of GM Corp.'s assets,
14 including books, ~~knowledge~~, and records, also hired GM Corp. personnel, ~~now~~
15 ~~defends lawsuits such as this by trying to distinguish between what it calls "old~~
16 ~~GM" and "new GM," which GM calls "GM LLC," despite the fact that .~~ GM LLC
17 expressly agreed, with Congress and with the Bankruptcy Court in 2009, that it
18 would be liable for ~~all damages~~ product liabilities resulting when people were
19 injured post-bankruptcy in vehicles manufactured pre-bankruptcy by GM Corp.

20
21
22
23
24 29.

25 ~~In the wake of the GM LLC ignition switch scandal, GM LLC CEO Mary~~
26 ~~Barra appeared before the United States Congress.~~

30.

~~On June 5, 2014, the GM LLC CEO Barra told the Congress and the American people “I am guided by two clear principles: First, that we do the right thing for those who were harmed; and, second, that we accept responsibility for our mistakes and commit to doing everything within our power to prevent this problem from ever happening again.”~~

31.

~~On June 18, 2014, the GM LLC CEO told the Congress “we have a special responsibility to [the families that lost loved ones, and those who suffered physical injury], and the best way to fulfill that responsibility is to fix the problem by putting in place the needed changes to prevent this from ever happening again.”~~

32.

~~On April 2, 2014, the GM LLC CEO told the Congress “we will not shirk from our responsibilities now or in the future.”~~

33.

~~Those statements~~ Statements made by GM LLC’s CEO speaking for GM LLC¹⁵ are totally and utterly contrary to GM ~~LLC’s and GM Corp.’s~~ reckless and wanton failure to warn Americans of the danger posed by Old GM CK pickups

¹⁵ *Synovus v. GM LLC*, GM LLC Answers to Plaintiffs’ Second Requests for Admission, *Williams v. GM LLC*, number 5.

1 with side-mounted gas tanks.

2 ~~34.~~

3 30.

4
5 Despite those statements to the United States Congress and the American
6 people, *GM LLC has denied* “that American citizens have a right to know when
7 GM has identified safety concerns with its vehicles.”¹⁶ *GM LLC has denied* that
8 “GM was aware there was a safety concern regarding its CK pickup trucks.”¹⁷ *GM*
9 *LLC has refused to admit* “that every human life is worth protecting from
10 preventable injuries caused by design and manufacturing defects.”¹⁸ *GM LLC has*
11 *refused to admit* “that if there is a safety defect in a GM vehicle GM should warn
12 the public.”¹⁹ *GM LLC has refused to admit* “that if GM knows it can take action
13 to save a human life from a preventable death, it has a duty to do that.”²⁰ *GM LLC*
14 *has refused to admit* “that if GM knows it can take action to save a human life
15 from a preventable death, it has a civic responsibility to do that.”²¹

20 **II. PARTIES, JURISDICTION, VENUE, AND SERVICE OF PROCESS**

21 ~~35.~~31.

22
23
24 ¹⁶ *Id.*, numbers 29, 31.

25 ¹⁷ *Id.*, number 32.

26 ¹⁸ *Id.*, number 34.

27 ¹⁹ *Id.*, number 37.

28 ²⁰ *Id.*, number 42.

²¹ *Id.*, number 45.

1 Plaintiff Kaitlyn Reichwaldt resides at 5162 Running Doe Drive, Suwannee,
2 GA 30024, is subject to the jurisdiction of this Court, and is a resident of the State
3 of Georgia.
4

5
6
7 ~~36.~~32.

8 Defendant GM LLC is a limited liability company organized and
9 incorporated under the laws of Delaware, with a principal place of business
10 located at 300 Renaissance Center, Detroit, Michigan 48265. GM LLC is engaged
11 in the business of designing, manufacturing, marketing, promoting, advertising,
12 distributing, and selling automobiles, trucks, SUVs, and other types of vehicles in
13 the State of Georgia, throughout the United States, and elsewhere.
14
15

16
17 ~~37.~~33.

18 GM LLC is subject to the jurisdiction of this Court because it transacts
19 business in, has registered as a foreign LLC transacting business in and maintains
20 a registered agent in the State of Georgia. The registered agent for GM LLC is:
21 CSC of Cobb County, Inc., 192 Anderson Street S.E., Suite 125, Marietta, Georgia
22 30060, where GM LLC may be served with legal process. By registering to do
23 business and appointing a registered agent for service of process in Georgia, GM
24 LLC has consented to jurisdiction in this state. GM LLC has admitted that it is
25
26
27
28

1 subject to the jurisdiction of this Court. Doc. 27.

2 ~~38.~~34.

3
4 GM LLC also is subject to general personal jurisdiction in the state of
5 Georgia because GM LLC is essentially at home in the State of Georgia. In 2012,
6 GM LLC purchased property and invested more than \$25 million in this state to
7 build an Information Technology Innovation Center (“IT Innovation Center”) in
8 Roswell, Georgia. The IT Innovation Center, which is one of only four such
9 centers nationwide, coordinates, facilitates and runs information technology
10 services including research and design functions for GM LLC’s nationwide and
11 worldwide business operations. In a press release announcing the decision to
12 locate the IT Innovation Center in Georgia, the GM LLC Chief Information
13 Officer, Randy Mott, referred to the IT Innovation Center as “critical to [GM’s]
14 overall business strategy.” In exchange for selecting Georgia as the home of an IT
15 Innovation Center, GM LLC asked for and received more than \$20 million in tax
16 incentives from the state of Georgia. In total, GM LLC employs more than 1,000
17 Georgia residents as employees at the IT Innovation Center. As a result of the
18 foregoing, GM LLC has chosen to be essentially at home in the state of Georgia
19 and is subject to general personal jurisdiction in this state.
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27 ~~39.~~

35.

Venue is proper in this Court because the Northern District of Georgia is the federal district Court for Cobb County, Georgia, the county from which this case was removed by GM LLC.

III. OPERATIVE FACTS

~~40.~~

36.

The excruciating thermal burns suffered by Kaitlyn Reichwaldt were the direct and proximate result of the explosion and fire.

~~41.~~

37.

Consumed by the fire and smoke engulfing her car, Ms. Reichwaldt consciously suffered and endured shock, terror, fright, physical and mental pain, suffering, and injuries.

~~42.~~

38.

The fire and fire-related injuries of Kaitlyn Reichwaldt were caused by design defects in the 1984 Old GM CK pickup.

~~43.~~

39.

Before it designed, built, and sold the subject pickup, GM Corp. knew that the fuel system design of the subject pickup was defective and vulnerable to side impact. GM Corp. also knew that a midship gas tank located inside the frame rails and between the axles would be a much less vulnerable location than the side-mounted gas tank outside the frame rails. ~~GM LLC acquired that same notice. After July 10, 2009, GM LLC was independently put on that same notice.~~

~~44.~~

40.

Before it designed, built, and sold the subject pickup, GM Corp. knew that locating the gas tank inside the frame rails and between the axles would provide much greater protection during side impacts, resulting in increased protection for occupants of the pickups and anyone whose vehicle is hit by or hits a CK. ~~GM LLC acquired that knowledge. After July 10, 2009, GM LLC independently obtained that same knowledge.~~

~~45.~~41.

Before and after it designed, built and sold the subject pickup and before Kaitlyn Reichwaldt's injuries, GM Corp. knew that a vehicle with a gas tank

1 mounted on the side, *outside* of the frame rail, was more likely to leak gas as a
2 result of a rupture in a side-impact collision than a vehicle with a gas tank
3 mounted *inside* of the frame rail. ~~GM LLC acquired that knowledge. Since July~~
4 ~~10, 2009, GM LLC has independently obtained that same knowledge.~~
5
6

7 ~~46.~~42.

8 Before and after it designed built and sold the subject pickup and before
9 Kaitlyn Reichwaldt's injuries, GM Corp. knew that when a vehicle with a gas tank
10 mounted on the side, outside of the frame rail, was struck during a side-impact
11 collision, a deadly post-collision fuel fed fire was a clear risk. ~~GM LLC acquired~~
12 ~~that knowledge. Since July 10, 2009, GM LLC has independently obtained that~~
13 ~~the same knowledge.~~
14
15
16

17 ~~47.~~43.

18 GM Corp. ~~and GM LLC have~~ affirmatively tried to keep citizens and
19 potential victims ignorant of dangers posed by GM Corp.'s side-mounted gas
20 tanks.
21

22 ~~48.~~44.

23
24 As a direct result of GM Corp.'s ~~and GM LLC's~~ conduct outlined above,
25 Kaitlyn Reichwaldt was severely burned by fire.
26

27 ~~49.~~45.

1 In 2009, after GM Corp. filed for Chapter 11 bankruptcy protection,
2 Defendant GM LLC purchased the assets of GM Corp., including GM Corp.'s
3 books and records. ~~After the sale, GM LLC has profited from entering into~~
4 ~~service maintenance and repair relationships with purchasers of GM Corp.~~
5 ~~products, and from manufacturing and selling parts and accessories for GM Corp.~~
6 ~~products (including the subject 1984 CK truck).~~

7
8
9
10 50.

11
12 46.

13 As part of its 2009 purchase of assets of GM Corp., Defendant GM LLC
14 expressly assumed liability for product liability claims against GM Corp. arising
15 from wrecks occurring after the sale.

16
17 51.

18 ~~After the bankruptcy sale, Defendant GM LLC employed nearly all of GM~~
19 ~~Corp.'s employees. In short, GM LLC acquired all specific knowledge about the~~
20 ~~subject pickup previously possessed by GM Corp.~~

21
22
23 52.

24 ~~Defendant GM LLC could have reasonably foreseen and did, in fact, foresee~~
25 ~~the occurrence of side impact collisions resulting in fires such as the one described~~
26 ~~in this Complaint.~~

53.

Since the bankruptcy sale, Defendant GM LLC has acquired from GM Corp. and obtained on its own actual knowledge that a gas tank located on the side of a pickup in a known crush zone is vulnerable to side impact, and that the result can be, and often has been, fires that seriously burn and/or kill vehicle occupants and others.

54.

Despite knowledge of its duty to warn the public arising from its purchase of GM Corp.'s assets, Defendant GM LLC failed at the time of the bankruptcy sale and all times since to warn the public, and Plaintiff in particular, of the dangers in a foreseeable wreck caused by the design of the CK trucks.

55.

Defendant GM LLC's reckless, and wanton conduct constituted disregard for the life and safety of Kaitlyn Reichwaldt and the lives and safety of the motoring public generally. GM LLC's reckless and wanton conduct also manifests a conscious indifference to the foreseeable consequences of that conduct to people like Kaitlyn Reichwaldt.

IIIIV. ASSUMED LIABILITY OF GM LLC

COUNT ONE—NEGLIGENCE & STRICT LIABILITY

~~56.~~

47.

Plaintiff realleges and reincorporates Paragraphs 1 through ~~55~~46 as if fully set forth herein verbatim.

~~57.~~

48.

The subject pickup was designed, manufactured, marketed, and distributed by GM Corp.

~~58.~~

49.

GM Corp. had a duty to exercise reasonable care to design, engineer, test, manufacture, inspect, market, distribute, and sell safe vehicles so as not to subject consumers or motorists to an unreasonable risk of harm. GM Corp. breached its duty to exercise reasonable care with respect to the subject pickup.

~~59.~~

50.

The subject pickup, when distributed by GM Corp., had a defectively designed gas system which caused the subject pickup to explode, which explosion and fire engulfed the subject pickup. The defective design of the fuel system

1 proximately caused the injuries to Kaitlyn Reichwaldt.

2 ~~60.~~

3 51.

4
5 Despite GM Corp.'s knowledge that the gas tank on its pickup trucks must
6
7 be mounted as near the center of the vehicle as practical, GM Corp. made the
8
9 decision to place the gas tank outside the frame rail on the subject pickup for
10 marketing reasons.

11 ~~61.~~

12 52.

13
14 GM Corp. violated its own internal design directive by placing the gas tank
15 in a known crush zone.

16 ~~62.~~

17 53.

18
19 GM Corp. violated its own internal design directive by not properly
20
21 eliminating or shielding the gas tank from all objects which could result in cutting
22
23 or puncturing of the gas tank.

24 ~~63.~~

25 54.

1 GM Corp. failed to design a fuel system whereby the gas tank was protected
2 from rupture due to side impact or sharp objects, despite the fact it was
3
4 technologically feasible and economically practicable to so design the fuel system.

5 ~~64.~~

6 55.

7
8 GM Corp. elected not to implement technologically feasible, economically
9 practicable, and fundamentally safer alternative designs for the gas tank location
10 and design on the subject pickups.
11

12 ~~65.~~

13 56.

14
15 GM Corp. instead elected a design and gas tank location that it absolutely
16 knew would result in fires, injuries, and deaths in foreseeable side-impacts.
17

18 ~~66.~~

19 57.

20
21 GM Corp.'s negligence proximately caused the injuries to Kaitlyn
22 Reichwaldt.
23

24 ~~67.~~

25 58.

26 GM Corp. is strictly liable in tort for the injuries to Kaitlyn Reichwaldt.
27

28 ~~68.~~

59.

Defendant GM LLC assumed liability for product liability claims against GM Corp. that arose after the bankruptcy sale. Plaintiff's negligence and strict liability claims against GM Corp. are properly asserted against GM LLC.

COUNT TWO—RECKLESS & WANTON MISCONDUCT

~~69.~~

60.

Plaintiff realleges and reincorporates Paragraphs 1 through ~~68~~59 as if fully set forth herein verbatim.

~~70.~~

61.

GM Corp.'s misconduct was a reckless and wanton disregard for the lives and wellbeing of the public, and of untold numbers of victims, including Kaitlyn Reichwaldt.

~~71.~~

62.

The reckless and wanton misconduct by GM Corp. proximately caused the burn injuries to Kaitlyn Reichwaldt.

~~72.~~

63.

29

1 Plaintiff is entitled to recover damages from GM Corp. pursuant to
2 O.C.G.A. § 51-1-11(b) (the “statute of repose”) and other applicable law.
3

4 ~~73.~~

5 64.

6
7 Defendant GM LLC assumed liability for product liability claims against
8 GM Corp. that arose after the bankruptcy sale. Plaintiff’s negligence and strict
9 liability claims against GM Corp. are properly asserted against GM LLC.
10

11 **COUNT THREE—FAILURE TO WARN**

12 ~~74.~~

13 65.

14
15 Plaintiff realleges and reincorporates Paragraphs 1 through ~~73~~64 as if fully
16 set forth herein verbatim.
17

18 ~~75.~~

19 66.

20
21 As the manufacturer of vehicles distributed and sold to the public, GM
22 Corp. had a duty to adequately warn the public about dangers it knew to exist in its
23 vehicles.
24

25 ~~76.~~

26 67.

1 By failing to warn of the danger, GM. Corp. breached its duty and
2 obligations to the public, including Kaitlyn Reichwaldt.
3

4 ~~77.~~

5 68.

6
7 GM Corp.'s failure to warn citizens about the dangers of its side-mounted
8 gas tanks, but to instead profess for decades that no such danger exists, was itself
9 reckless and wanton.
10

11 ~~78.~~

12 69.

13
14 GM Corp.'s election not to warn of the known defective and unreasonably
15 dangerous conditions in the subject pickup proximately caused the injuries to
16 Kaitlyn Reichwaldt.
17

18 ~~79.~~

19 70.

20
21 Plaintiff is entitled to recover damages for GM Corp.'s failure to warn
22 pursuant to O.C.G.A. § 51-1-11(b) (the "statute of repose") and other applicable
23 law.
24

25 ~~80.~~

26 71.

1 Defendant GM LLC assumed liability for product liability claims against
2 GM Corp. that arose after the bankruptcy sale. Plaintiff's failure to warn claim
3 against GM Corp. is a product liability claim and is properly asserted against GM
4 LLC.
5

6
7 ~~COUNT FOUR—PUNITIVE DAMAGES~~

8 ~~81.~~

9
10 ~~Plaintiff realleges and reincorporates Paragraphs 1 through 80 as if fully set~~
11 ~~forth herein verbatim.~~

12 ~~82.~~

13
14 ~~GM Corp. is guilty of such willful misconduct, malice, fraud, wantonness,~~
15 ~~oppression, and an entire want of care that its misconduct is sufficient to raise the~~
16 ~~presumption of conscious indifference to the consequences.~~

17
18
19 ~~83.~~

20
21 ~~GM Corp.'s misconduct is so aggravating it authorizes, warrants, and~~
22 ~~demand the imposition of substantial punitive damages against GM LLC~~
23 ~~pursuant to O.C.G.A. § 51-12-5.1 because GM LLC assumed liability for product~~
24

~~liability claims against GM Corp. that arose after the bankruptcy.²²~~

~~IV~~V. INDEPENDENT LIABILITY OF GM LLC

**COUNT ~~FIVE—FAILURE TO WARN~~FOUR—EXPENSES OF
LITIGATION**

~~84.~~

72.

Plaintiff realleges and reincorporates Paragraphs 1 through ~~55~~71 as if fully
set forth herein verbatim.

~~85.~~

~~At the time that GM LLC purchased substantially all of the assets of GM
Corp., and at all times since, GM LLC, like GM Corp., could reasonably have
foreseen and did, in fact, foresee the occurrence of a PCFFF such as the one that
burned Kaitlyn Reichwaldt, and GM LLC knew or reasonably should have known
that the subject CK pickup would fail and cause injuries like those Kaitlyn
Reichwaldt suffered.~~

~~85.~~

~~²² Plaintiff contends that GM LLC assumed liability for punitive damages based on
the conduct of GM Corp. as part of GM LLC's assumption of liability for
product liability claims. GM LLC has contended that it did not assume liability
for punitive damages based on GM Corp.'s conduct. Kaitlyn Reichwaldt
intends to litigate that issue. Plaintiff will assert at trial those claims, and only
those claims, which the Court determines she is legally allowed to assert.~~

1 ~~As a result of its purchase of GM Corp.'s assets, GM LLC owed a duty to~~
2 ~~the consuming public in general, and to Plaintiff in particular, to warn of the~~
3 ~~dangers arising from the design of the subject CK pickup. GM LLC's duty to~~
4 ~~warn arose at the time it purchased substantially all of the assets of GM Corp. and~~
5 ~~continued up to, and after, the time of Kaitlyn Reichwaldt's injury.~~

8 86.

9
10 ~~By failing to warn of the danger, GM LLC breached its duty and obligations~~
11 ~~to the public, including Kaitlyn Reichwaldt.~~

12 87.

13
14 ~~GM LLC's failure to warn citizens about the dangers of the CK~~
15 ~~side-mounted gas tanks, while instead professing (as its predecessor GM Corp. did~~
16 ~~for decades) that no such danger exists, was itself reckless and wanton.~~

18 88.

19
20 ~~GM LLC's election not to warn of the known defective and unreasonably~~
21 ~~dangerous conditions in the subject pickup proximately caused the injuries to~~
22 ~~Kaitlyn Reichwaldt.~~

25 89.

26
27 ~~Plaintiff is entitled to recover damages for GM LLC's failure to warn~~
28

1 pursuant to O.C.G.A. § 51-1-11(b) (the “statute of repose”) and other applicable
2 law.
3

4 ~~COUNT SIX—PUNITIVE DAMAGES~~

5 ~~90.~~

6
7 Plaintiff realleges and reincorporates Paragraphs 1 through 55 as if fully set
8 forth herein verbatim.
9

10 ~~91.~~

11 GM LLC, by failing to warn of known dangers, is guilty of such willful
12 misconduct, malice, fraud, wantonness, oppression, and an entire want of care that
13 its misconduct is sufficient to raise the presumption of conscious indifference to
14 the consequences.
15

16 ~~92.~~

17
18 GM LLC’s misconduct is so aggravating it authorizes, warrants, and
19 demands the imposition of substantial punitive damages against GM LLC
20 pursuant to O.C.G.A. § 51-12-5.1.
21

22
23
24
25 ~~COUNT SEVEN—EXPENSES OF LITIGATION~~

26 ~~93.~~

1 ~~Plaintiff realleges and reincorporates Paragraphs 1 through 55 as if fully set~~
2 ~~forth herein verbatim.~~

3
4 ~~94.~~

5 73.

6
7 GM LLC has acted in bad faith, has been stubbornly litigious, and has
8 caused the Plaintiff unnecessary trouble and expense, entitling Plaintiff to recover
9 from Defendant all costs of litigation, including attorneys' fees and expenses,
10 pursuant to O.C.G.A. § 13-6-11 and other applicable law.
11

12 ~~¶~~VI. **DAMAGES SOUGHT**

13
14 ~~95.~~

15 74.

16
17 Plaintiff realleges and reincorporates Paragraphs 1 through ~~94~~73 as if fully
18 set forth herein verbatim.

19
20 ~~87.~~

21 75.

22 The damages claimed by Plaintiff were proximately caused by the tortious
23 acts and omissions of GM Corp. ~~and GM LLC.~~

24
25 ~~88.~~

26 76.

1 Plaintiff Kaitlyn Reichwaldt seeks all damages allowed by law, including
2 the following:
3

- 4 (a) shock, fright, and terror experienced from the time of the incident;
5 (b) mental and physical pain and suffering endured from the time of the
6 incident;
7

- 8 (c) past and future medical bills;
9

- 10 ~~(d)– punitive damages to punish and deter GM LLC pursuant to O.C.G.A.~~
11 ~~§ 51-12-5.1;~~ and

- 12 ~~(e)~~ attorneys' fees and litigation expenses pursuant to O.C.G.A. §
13 13-6-11 and other applicable law.
14

15 **~~V~~VII. PRAYER FOR RELIEF**
16

17 WHEREFORE Plaintiff prays for the following relief:

- 18 (a) That summons issue requiring Defendant to appear as provided by
19 law to answer this Complaint;
20

- 21 (b) That service be had upon Defendant as provided by law;
22

- 23 (c) That Plaintiff have and recover all damages for all losses
24 compensable under Georgia law as set forth above;

- 25 ~~(d) That the Court award and order punitive damages against Defendant;~~

- 26 ~~(e)~~(d) That all expenses of litigation, including attorneys' fees, be cast
27
28

1 against Defendant;

2 (fe) That Plaintiff have a trial by jury; and

3
4 (gf) For such other and further relief as the Court shall deem just and
5 proper.
6

7 **PLAINTIFF HEREBY DEMANDS A TRIAL BY JURY.**

8 This ____ day of ~~August~~September, 2017.

9
10 BUTLER WOOTEN & PEAK LLP

11
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